

53B-8a-101. Purpose.

(1) (a) The Legislature finds that the general welfare and well-being of the state are directly related to educational levels and skills of the citizens of the state.

(b) Therefore, a vital and valid public purpose is served by the creation and implementation of programs which encourage and make possible the attainment of higher education by the greatest number of citizens of the state.

(2) (a) The Legislature finds that the state has limited resources to provide additional programs for higher education funding and that the continued operation and maintenance of the state's public institutions of higher education and the general welfare of the citizens of the state will be enhanced by establishing a plan which allows citizens of the state to invest money in a public trust for future application to the payment of higher education costs.

(b) The Legislature further finds that the plan described in Subsection (2)(a) serves a vital and valid public purpose.

(3) (a) In order to make available to the citizens of the state an opportunity to fund future higher education needs, it is necessary that a public trust be established in which money may be invested for future educational use.

(b) It may also be necessary to establish and create an endowment fund, which may be funded with public funds, among other sources, the income from which may be made available to account owners to enhance or encourage their savings invested for future higher education costs or for use in scholarship or other college savings incentive programs.

Amended by Chapter 6, 2010 General Session

53B-8a-102. Definitions.

As used in this chapter:

(1) "Account agreement" means an agreement between an account owner and the Utah Educational Savings Plan entered into under this chapter.

(2) "Account owner" means a person, estate, or trust, if that person, estate, or trust has entered into an account agreement under this chapter to save for the higher education costs on behalf of a beneficiary.

(3) "Administrative fund" means the money used to administer the Utah Educational Savings Plan.

(4) "Beneficiary" means the individual designated in an account agreement to benefit from the amount saved for higher education costs.

(5) "Board" means the board of directors of the Utah Educational Savings Plan which is the state Board of Regents acting in its capacity as the Utah Higher Education Assistance Authority under Title 53B, Chapter 12, Higher Education Assistance Authority.

(6) "Endowment fund" means the endowment fund established under Section 53B-8a-107 which is held as a separate fund within the Utah Educational Savings Plan.

(7) "Executive director" means the administrator appointed to administer and manage the Utah Educational Savings Plan.

(8) "Federally insured depository institution" means an institution whose deposits and accounts are to any extent insured by a federal deposit insurance agency,

including the Federal Deposit Insurance Corporation and the National Credit Union Administration.

(9) "Higher education costs" means qualified higher education expenses as defined in Section 529(e)(3), Internal Revenue Code.

(10) "Plan" means the Utah Educational Savings Plan created in Section 53B-8a-103.

(11) "Program fund" means the program fund created under Section 53B-8a-107, which is held as a separate fund within the Utah Educational Savings Plan.

(12) "Qualified investment" means an amount invested in accordance with an account agreement established under this chapter.

(13) "Tuition and fees" means the quarterly or semester charges imposed to attend an institution of higher education and required as a condition of enrollment.

Amended by Chapter 46, 2011 General Session

53B-8a-103. Creation of Utah Educational Savings Plan -- Powers and duties of plan -- Certain exemptions.

(1) There is created the Utah Educational Savings Plan, which may also be known and function as the Utah Educational Savings Plan Trust.

(2) The plan:

(a) is a non-profit, self-supporting agency that administers a public trust;

(b) shall administer the various programs, funds, trusts, plans, functions, duties, and obligations assigned to the plan:

(i) consistent with sound fiduciary principles; and

(ii) subject to review of the board; and

(c) shall be known as and managed as a qualified tuition program in compliance with Section 529, Internal Revenue Code, that is sponsored by the state.

(3) The plan may:

(a) make and enter into contracts necessary for the administration of the plan payable from plan money, including:

(i) contracts for goods and services; and

(ii) contracts to engage personnel, with demonstrated ability or expertise, including consultants, actuaries, managers, counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice;

(b) adopt a corporate seal and change and amend it from time to time;

(c) invest money within the program, administrative, and endowment funds in accordance with the provisions under Section 53B-8a-107;

(d) enter into agreements with account owners, any institution of higher education, any federal or state agency, or other entity as required to implement this chapter;

(e) solicit and accept any grants, gifts, legislative appropriations, and other money from the state, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation for deposit to the administrative fund, endowment fund, or the program fund;

(f) make provision for the payment of costs of administration and operation of the plan;

(g) carry out studies and projections in order to advise account owners regarding present and estimated future higher education costs and levels of financial participation in the plan required in order to enable account owners to achieve their educational funding objective;

(h) participate in federal, state, local governmental, or private programs;

(i) create public and private partnerships, including investment or management relationships with other 529 plans or entities;

(j) promulgate, impose, and collect administrative fees and charges in connection with transactions of the plan, and provide for reasonable service charges;

(k) procure insurance:

(i) against any loss in connection with the property, assets, or activities of the plan; and

(ii) indemnifying any member of the board from personal loss or accountability arising from liability resulting from a member's action or inaction as a member of the plan's board;

(l) administer outreach efforts to:

(i) market and publicize the plan and its products to existing and prospective account owners; and

(ii) encourage economically challenged populations to save for post-secondary education;

(m) adopt, trademark, and copyright names and materials for use in marketing and publicizing the plan and its products;

(n) administer the funds of the plan;

(o) sue and be sued in its own name;

(p) own institutional accounts in the plan to establish and administer:

(i) scholarship programs; or

(ii) other college savings incentive programs, including programs designed to enhance the savings of low income account owners investing in the plan; and

(q) have and exercise any other powers or duties that are necessary or appropriate to carry out and effectuate the purposes of this chapter.

(4) (a) Except as provided in Subsection (4)(b), the plan is exempt from the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

(b) (i) The annual audited financial statements of the plan described in Section 53B-8a-111 are public records.

(ii) Financial information that is provided by the plan to the Division of Finance and posted on the Utah Public Finance Website in accordance with Section 63A-3-402 is a public record.

Amended by Chapter 46, 2011 General Session

Amended by Chapter 342, 2011 General Session

53B-8a-104. Office facilities, clerical, and administrative support for the Utah Educational Savings Plan.

(1) The board shall provide to the plan, by agreement, administrative and clerical support and office facilities and space.

(2) Reasonable charges or fees may be levied against the plan pursuant to the

agreement for the services provided by the board.

Amended by Chapter 6, 2010 General Session

53B-8a-105. Powers and duties of board.

(1) The board has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of this chapter pertaining to the plan.

(2) The duties, responsibilities, funds, liabilities, and expenses of the board in oversight and governance of the plan shall be maintained separate and apart from the board's other duties, responsibilities, funds, liabilities, and expenses.

(3) The board shall make policies governing the:

(a) administration of the plan; and

(b) appointment and duties of the plan's executive director.

(4) (a) The board may appoint advisory committees to aid the board in fulfilling its duties and responsibilities.

(b) An advisory committee member may receive compensation and be reimbursed for reasonable expenses incurred in the performance of the member's official duties as determined by the board.

Amended by Chapter 46, 2011 General Session

53B-8a-106. Account agreements.

The plan may enter into account agreements with account owners on behalf of beneficiaries under the following terms and agreements:

(1) (a) An account agreement may require an account owner to agree to invest a specific amount of money in the plan for a specific period of time for the benefit of a specific beneficiary, not to exceed an amount determined by the executive director.

(b) Account agreements may be amended to provide for adjusted levels of payments based upon changed circumstances or changes in educational plans.

(c) An account owner may make additional optional payments as long as the total payments for a specific beneficiary do not exceed the total estimated higher education costs as determined by the executive director.

(d) Subject to Subsections (1)(f) and (g), the maximum amount of a qualified investment that a corporation that is an account owner may subtract from unadjusted income for a taxable year in accordance with Title 59, Chapter 7, Corporate Franchise and Income Taxes, is \$1,710 for each individual beneficiary for the taxable year beginning on or after January 1, 2010, but beginning on or before December 31, 2010.

(e) Subject to Subsections (1)(f) and (g), the maximum amount of a qualified investment that may be used as the basis for claiming a tax credit in accordance with Section 59-10-1017, is:

(i) for a resident or nonresident estate or trust that is an account owner, \$1,710 for each individual beneficiary for the taxable year beginning on or after January 1, 2010, but beginning on or before December 31, 2010;

(ii) for a resident or nonresident individual that is an account owner, other than a husband and wife who are account owners and file a single return jointly under Title 59, Chapter 10, Individual Income Tax Act, \$1,710 for each individual beneficiary for the

taxable year beginning on or after January 1, 2010, but beginning on or before December 31, 2010; or

(iii) for a husband and wife who are account owners and file a single return jointly under Title 59, Chapter 10, Individual Income Tax Act, \$3,420 for each individual beneficiary:

(A) for the taxable year beginning on or after January 1, 2010, but beginning on or before December 31, 2010; and

(B) regardless of whether the plan has entered into:

(I) a separate account agreement with each spouse; or

(II) a single account agreement with both spouses jointly.

(f) (i) For taxable years beginning on or after January 1, 2011, the executive director shall annually increase the maximum amount of a qualified investment described in Subsections (1)(d) and (1)(e)(i) and (ii), by a percentage equal to the increase in the consumer price index for the preceding calendar year.

(ii) After making an increase required by Subsection (1)(f)(i), the executive director shall:

(A) round the maximum amount of the qualified investments described in Subsections (1)(d) and (1)(e)(i) and (ii) increased under Subsection (1)(f)(i) to the nearest 10 dollar increment; and

(B) increase the maximum amount of the qualified investment described in Subsection (1)(e)(iii) so that the maximum amount of the qualified investment described in Subsection (1)(e)(iii) is equal to the product of:

(I) the maximum amount of the qualified investment described in Subsection (1)(e)(ii) as rounded under Subsection (1)(f)(ii)(A); and

(II) two.

(iii) For purposes of Subsections (1)(f)(i) and (ii), the executive director shall calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

(g) For taxable years beginning on or after January 1, 2011, the executive director shall keep the previous year's maximum amount of a qualified investment described in Subsections (1)(d) and (1)(e)(i) and (ii) if the consumer price index for the preceding calendar year decreases.

(2) (a) Beneficiaries designated in account agreements must be designated after birth and before age 19 for an account owner to:

(i) subtract a qualified investment from income under Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

(ii) use a qualified investment as the basis for claiming a tax credit in accordance with Section 59-10-1017.

(b) Account owners may designate a beneficiary age 19 or older, but investments for that beneficiary are not eligible to be:

(i) subtracted from income under Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

(ii) used as the basis for claiming a tax credit in accordance with Section 59-10-1017.

(3) Each account agreement shall state clearly that there are no guarantees regarding money in the plan as to the return of principal and that losses could occur.

- (4) Each account agreement shall provide that:
 - (a) a contributor to, or designated beneficiary under, an account agreement may not direct the investment of any contributions or earnings on contributions;
 - (b) any part of the money in any account may not be used as security for a loan; and
 - (c) an account owner may not borrow from the plan.
- (5) The execution of an account agreement by the plan may not guarantee in any way that higher education costs will be equal to projections and estimates provided by the plan or that the beneficiary named in any account agreement will:
 - (a) be admitted to an institution of higher education;
 - (b) if admitted, be determined a resident for tuition purposes by the institution of higher education;
 - (c) be allowed to continue attendance at the institution of higher education following admission; or
 - (d) graduate from the institution of higher education.
- (6) A beneficiary may be changed as permitted by the rules and regulations of the board upon written request of the account owner prior to the date of admission of any beneficiary under an account agreement by an institution of higher education so long as the substitute beneficiary is eligible for participation.
- (7) An account agreement may be freely amended throughout the term of the account agreement in order to enable an account owner to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters as authorized by rule.
- (8) Each account agreement shall provide that:
 - (a) the account agreement may be canceled upon the terms and conditions, and upon payment of the fees and costs set forth and contained in the board's rules and regulations; and
 - (b) the executive director may amend the agreement unilaterally and retroactively, if necessary, to maintain the plan as a qualified tuition program under Section 529, Internal Revenue Code.

Amended by Chapter 6, 2010 General Session

53B-8a-107. Program, administrative, and endowment funds -- Investment and payments from funds.

- (1) (a) The plan shall segregate money received by the plan into three funds, the program fund, the administrative fund, and the endowment fund.
- (b) The plan, as approved by the board, may hold, deposit, and invest program fund, administrative fund, and endowment fund money in the following:
 - (i) the Public Treasurer's Investment Fund;
 - (ii) mutual funds, securities, or other investments registered with the United States Securities and Exchange Commission;
 - (iii) federally insured depository institutions;
 - (iv) stable value products, including guaranteed investment contracts, guaranteed interest contracts, and guaranteed insurance contracts; and
 - (v) any investments that are determined by the board to be appropriate and that

would be authorized under:

- (A) the provisions of Section 51-7-11; or
- (B) rules of the State Money Management Council applicable to gift funds.

(2) Transfers may be made from the program fund to the administrative fund to pay operating costs:

(a) associated with administering the plan and as required under Sections 53B-8a-103 through 53B-8a-105; and

(b) as included in the budget approved by the board.

(3) (a) All money paid by account owners in connection with account agreements shall be deposited as received into separate accounts within the program fund which shall be invested and accounted for separately.

(b) Money accrued by account owners in the program fund may be used for:

- (i) payments to any institution of higher education;
- (ii) payments to the account owner or beneficiary;
- (iii) transfers to another 529 plan; or
- (iv) other expenditures or transfers made in accordance with the account agreement.

(4) (a) All money received by the plan from the proceeds of gifts and other endowments for the purposes of the plan shall be:

(i) deposited, according to the nature of the donation, as received into the endowment fund or the administrative fund; and

(ii) invested and accounted for separately.

(b) Any gifts, grants, or donations made by any governmental unit or any person, firm, partnership, or corporation to the plan for deposit to the endowment fund or the administrative fund is a grant, gift, or donation to the state for the accomplishment of a valid public eleemosynary, charitable, and educational purpose and is not included in the income of the donor for Utah tax purposes.

(c) The endowment fund or the administrative fund may be used to enhance the savings of low income account owners investing in the plan, for scholarships, or for other college savings incentive programs as approved by the board.

(d) Transfers may be made between the endowment fund and the administrative fund upon approval by the board.

(e) Endowment fund earnings not accruing to a beneficiary under an account agreement, not transferred to the administrative fund, or not otherwise approved by the board for expenditure, shall be reinvested in the endowment fund.

Amended by Chapter 46, 2011 General Session

53B-8a-108. Cancellation of agreements.

(1) Any account owner may cancel an account agreement at will.

(2) If an account agreement is cancelled by the account owner, the current account balance shall be disbursed to the account owner less:

(a) an administrative refund fee, which may be charged by the plan, except as provided in Subsection (3); and

(b) any penalty or tax required to be withheld by the Internal Revenue Code.

(3) An administration refund fee may not be levied by the plan if the account

agreement is cancelled due to:

- (a) the death of the beneficiary; or
- (b) the permanent disability or mental incapacity of the beneficiary.

Amended by Chapter 6, 2010 General Session

53B-8a-109. Repayment and ownership of funds in the account -- Transfer of ownership rights.

- (1) (a) The account owner retains ownership of funds in the account until:
 - (i) funds are used to pay higher education costs for the beneficiary;
 - (ii) funds are otherwise disbursed;
 - (iii) funds are transferred for administrative costs; or
 - (iv) the account is closed.
- (b) Funds in the account shall be considered to be held in trust for the benefit of the beneficiary.
- (2) Any amounts that may be paid pursuant to the plan that are not listed in this section are owned by the plan.
- (3) (a) An account owner may transfer ownership rights to another eligible person.
- (b) The transfer shall be affected and the property distributed in accordance with administrative regulations promulgated by the board or the terms of the account agreement.

Amended by Chapter 6, 2010 General Session

53B-8a-110. Effect of payments on determination of need and eligibility for student aid.

No student loan program, student grant program, or other program administered by any agency of the state, except as may be otherwise provided by federal law or the provisions of any specific grant applicable to that law, shall take into account and consider amounts available for the payment of higher education costs pursuant to the plan in determining need and eligibility for student aid.

Amended by Chapter 6, 2010 General Session

53B-8a-111. Annual audit of financial statements -- Information to governor and Legislature.

- (1) The financial statements of the plan shall be audited annually by the state auditor or the state auditor's designee and reported in accordance with generally accepted accounting principles.
- (2) The plan shall submit to the governor and the Legislature:
 - (a) upon request, any studies or evaluations of the plan;
 - (b) upon request, a summary of the benefits provided by the plan including the number of participants and beneficiaries in the plan; and
 - (c) upon request, any other information which is relevant in order to make a full, fair, and effective disclosure of the operations of the plan.

Amended by Chapter 6, 2010 General Session

53B-8a-112. Tax considerations.

(1) For tax purposes the property of the plan and its income are governed by Section 59-10-201.

(2) The tax commission, in consultation with the board and the plan, may adopt rules necessary to monitor and implement the tax provisions referred to in Subsection (1) as related to the property of the plan and its income.

Amended by Chapter 6, 2010 General Session

53B-8a-113. Property rights to plan assets.

(1) The assets of the plan, including the program fund and the endowment fund, shall at all times be preserved, invested, and expended solely and only for the purposes of the plan and shall be held in trust for the account owners and beneficiaries.

(2) No property rights in the plan shall exist in favor of the state.

(3) The assets may not be transferred or used by the state for any purposes other than the purposes of the plan.

Amended by Chapter 6, 2010 General Session

53B-8a-114. Liberal construction.

This chapter shall be construed liberally in order to effectuate its legislative intent.

Enacted by Chapter 4, 1996 Special Session 2